

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT PIERCE DIVISION

CASE NO. 22-14226-CIV-CANNON/McCabe

BRANDON WILLIAM HARVEY,

Petitioner,

v.

RICKY D. DIXON,
Secretary, Florida Department of Corrections,

Respondent.

/

**ORDER ACCEPTING REPORT OF MAGISTRATE JUDGE
AND DENYING MOTIONS**

THIS CAUSE comes before the Court upon the Report and Recommendation issued by Magistrate Judge Ryon M. McCabe on January 24, 2023 [ECF No. 64]. The Report recommends the following: denial of Petitioner's *pro se* Petition for Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2254 [ECF No. 1]; denial of Petitioner's Motions for Leave to Amend [ECF Nos. 19, 35]; and denial of Petitioner's request for an evidentiary hearing [ECF No. 50].

A district court may accept, reject, or modify a magistrate judge's report and recommendation. 28 U.S.C. § 636(b)(1). Those portions of the report and recommendation to which objections are made are accorded *de novo* review if those objections "pinpoint the specific findings that the party disagrees with." *United States v. Schultz*, 565 F.3d 1353, 1360 (11th Cir. 2009); *see also* Fed. R. Civ. P. 72(b)(3). Any portions of the report and recommendation to which no specific objections are made are reviewed only for clear error. *See Thomas v. Arn*, 474 U.S. 140, 150 (1985) ("It does not appear that Congress intended to require district court review of a magistrate's factual or legal conclusions, under a *de novo* or any other standard, when neither party

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objects to those findings.”); *Macort v. Prem, Inc.*, 208 F. App’x 781, 784 (11th Cir. 2006) (“Most circuits agree that in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” (internal quotation marks omitted)).

The Court has considered Petitioner’s objections [ECF No. 64] and finds them to lack merit. Therefore, after conducting a *de novo* review of the Report and the record, the Court agrees with the Report, including the Report’s recommendation not to issue a certificate of appealability under 28 U.S.C. § 2253(c). Petitioner failed to make a “substantial showing of the denial of a constitutional right” sufficient to support the issuance of a certificate of appealability. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. Magistrate Judge McCabe’s Report [ECF No. 64] is **ACCEPTED**.
2. The Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 [ECF No. 1] is **DENIED**.
3. No certificate of appealability shall issue.
4. Petitioner’s “Motion in Time for Petitioner to Take the Stand” [ECF No. 50] is **DENIED**.
5. Petitioner’s Motions to Amend the Petition [ECF Nos. 19 and 35] are **DENIED**.
6. The Clerk is directed to **CLOSE** this case.

DONE AND ORDERED in Chambers at Fort Pierce, Florida this 28th day of February 2023.



AILEEN M. CANNON
UNITED STATES DISTRICT JUDGE

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cc: counsel of record

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